

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11101 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHREE SURAT PANJRAPOLE

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR KH KAJI for Petitioner

MR BB NAIK WITH MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 17/03/99

ORAL JUDGEMENT Per J.N.Bhatt, J.)

The petitioner, which is a public charitable trust registered under the Bombay Public Trust Act, 1956 and which has the history of its existence relating back to 1796, has assailed the impugned order of the respondent authority, dated 13.10.98, under section 80G(5) of the Income-tax Act, 1961 (IT Act), whereby, the request for

renewal of recognition under section 80G of the IT Act came to be rejected, by filing this petition, under Article 226 of the Constitution of India, inter alia, contending that the impugned order is arbitrary, contrary to law and unreasonable.

The petitioner trust, as its name itself indicates, runs various activities for the preservation, protection and promotion of the infirm, invalid and rejected cattle. The petitioner trust constituted for laudable objects which could very well be appreciated as they are highlighted in para 3 of the petition, as follows:

- (1) To provide protection and maintenance of cattle and animals permanently handed over to the trust by any one from any portion of Gujarat irrespective of caste-creed and religion.
- (2) To provide and arrange for treatment, medicine and food to animals admitted to Panjarapole which are disable, old and suffering from diseases or not properly cared for.
- (3) To take measures for cattle breeding and development of animal husbandry and to increase milk production and bumper of cattle of our nation.
- (4) To meet the above referred objects, the trust is authorized to receive, purchase, sell and give on lease or to give land for cultivation and take measures in the interest of the trust and to purchase cattle and animals to expend money for treatment protection of animals and to accept cash donation and material donation annually or occasionally or as may be decided.

The petitioner trust has been carrying on its activities for the promotion and amelioration of the aforesaid objects. It also adopts measures for good cattle breeding, development and animal husbandry with a view to see that more quantum of production of milk is made available.

It is also very clear from the facts of the present case that from the very inception of the petitioner-institution, it has been treated as exempt from the income tax on the ground that its activities are only charitable. In view of the rise and increase in volume of activities of the petitioner trust, it has been inviting donations from the members of the public from

time to time. The petitioner had, therefore, applied for the recognition under section 80G of the IT Act in 1989 which was granted by the Commissioner of Income-tax for the period commencing from 1.4.89 to 31.3.90. It is not in dispute that again the recognition was renewed by the order dated 11.7.90 for the period commencing from 1.4.90 to 31.3.93. So was again renewed for a period from 6.4.93 to 31.3.98. It, therefore, becomes evident that the recognition under section 80G of the IT Act by the respondent authority has been enjoyed by the petitioner trust since more than eight years. The petitioner's contention, also, has been that all along it has complied with the requirements of law for the grant of such recognition under section 80G of the IT Act.

Now, it leads us to the period which is under controversy in this petition for which the renewal of recognition for a further period of 5 years is rejected by the respondent. The petitioner-trust, as such, had applied for renewal of recognition for a further period of five years, on 7.4.98. A show cause notice came to be issued on 16.9.98 stating that the petitioner trust was running a dairy business on a large scale and no separate books of accounts were maintained and therefore the claim for exemption cannot be granted and consequently the renewal of the certificate under section 80G(5) of the IT Act came to be refused.

It is also, amply, manifest from the facts that pursuant to the show cause notice issued to the petitioner trust, a reply was given to the respondent authority, wherein, it was, specifically, contended that out of the total number of cattle with it for the years 1994-95 to 1997-98, milk giving cattle came to hardly 2 to 3 per cent of the total number of cattle. Since the petitioner trust was unable to meet with the expenditure incurred for the purpose of the objects, it had to dispose of milk obtained by it from the milk giving cattle and, that too, mostly to co-operative society known as Choryashi Taluka Dudh Utpadak Sahakari Mandli Ltd. and also supplied the same to its staff members and some customers.

It was also the case of the petitioner-trust that in order to carry out the activities for the promotion of the objects, despite the receipt from the sale of milk, huge annual deficit, on account of loss has been occurring and which has, as such, accumulated as on 31.3.98 to Rs.72,30,920/- as highlighted in the audited statement of accounts for that year. In short, it has been the contention of the petitioner-trust that there is no organised or planned dairy business as pointed out by

the respondent authority. Of course, the petitioner trust has also raised the contention about the violation of principles of 'audi alterem partem'.

At the stage of final hearing, learned counsel appearing for the petitioner trust in his fair and candid submission, stated at the Bar, that the petitioner trust is ready and willing to maintain and submit the accounts in respect of the sale of milk with effect, from 1.4.98, without entering into and admitting the controversy of existence of separate business with a view to cut short the controversy emanated from the impugned order which is nothing but a storm in the tea-cup and for the purpose of effective and efficient implementation of the laudable objects of the petitioner trust, wherein, thousands of infirm, invalid, unmilching, injured, forlorn cattle are not only protected, served and maintained but are also reared by the petitioner trust. It may also be mentioned that there is no dispute about the fact that the trust came in existence 1796 and it has been doing social services for the care, protection and maintenance of the infirm, invalid, old, etc. cattle since 1796. With a view to meet with the heavy expenditure of maintenance of almost 93 per cent of the unmilching cattle, number of which runs into hundreds, the petitioner trust had to resort to public donations for which certificate and recognition was granted by the respondent authority under section 80G for almost a spell of eight years.

After having, dispassionately, examined the historical and long track record for upliftment and amelioration of weak, infirm, aged, etc. cattle since 1796 and considering the submissions advanced before us with all comity, we are of the opinion that the respondent authority should be directed to re-examine and re-consider the request of the petitioner trust for certificate and recognition under section 80G(5) of the IT Act, sympathetically, as the petitioner trust is predominantly engaged in utmost welfare of infirm, old, aged, dejected and rejected cattle since more than two centuries so that the subsequent event in the form of oral undertaking before this Court on behalf of the petitioner trust by its learned counsel for the petitioner that the petitioner shall prepare and submit the accounts with regard to the sale of milk, which is incidental to the main object, to the respondent and to see that the respondent authority keeps into the mental focus all the relevant and material factors and aspects including the principles of natural justice, to the extent required, in the circumstances before re-examining and reconsidering the request for certificate and

recognition of the petitioner trust under section 80G(5) of the IT Act, we deem it not only necessary, but expedient to remit the matter to the respondent authority for a fresh look and appropriate decision, sympathetically. Our ultimate anxiety is to see that the designs and objects articulated by the petitioner trust in the petition are implemented, subserved in the societal and larger interest and also for the infirm, invalid, rejected, old, forlorn, and unhealthy cattle. Under the provisions of section 35 of the Prevention of Cruelty to Animals Act, 1960 (Act of 59 of 1960) and the objects of the said Act, the petitioner trust which is a Panjrapole is obliged to perform statutory duties as and when directed by the Courts and the in view of the aforesaid facts and the objects of the trust, the matter is required to be remitted back to the respondent authority for fresh consideration.

Accordingly, the matter is remanded to the respondent for reconsideration and readjudication by setting aside the impugned order of the respondent authority. Since we are in the second half of March and one of the purposes of certificate under section 80G is to give incentive to the donors more so before the end of the financial year, the respondent authority is directed to rehear and readjudicate the matter, as early as possible, preferably within a period of four weeks from the date of receipt of the writ.

Accordingly, this petition stands allowed without order of costs in view of the sympathetic attitude of the Department. Rule is made absolute accordingly to the aforesaid extent.

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